IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Ins.APP.No. 39 of 2003()

EIC.29/2001 of E.I.COURT, KOZHIKODE
.....

APPELLANT/APPLICANT

M/S.UNITED TOURS & TRAVELS (CALICUT) (P) LTD, DOOR NO.1673/19, KIS COMPLEX, OPPOSITE TAGORE CENTENARY HALL, R.C.ROAD, CALICUT REPRESENTED BY ITS EXECUTIVE DIRECTOR.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.A.M.SHAFFIQUE
SMT.PRIYA KRISHNAMOORTHY
SMT.PRIYA MANJOORAN

RESPONDENTS: RESPONDENT

REGIONAL DIRECTOR, ESI CORPORATION, PANCHADWEEP BHAVAN, TRICHUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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INS. APPEAL NO. 39 OF 2003

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Dated this the 30th day of November, 2007

O R D E R

This appeal is filed by the applicant in E.I.C. No. 29 of 2001 on the file of the Employees' Insurance Court, Kozhikode. Respondent issued a notice to the appellant claiming contribution on the ground that the establishment of the appellant is covered by the provisions of the Employees State Insurance Act. According to the respondent, the appellant is liable to pay contribution from 1.4.1992 onwards. That was objected to by the appellant. It filed E.I.C. No.29of 2001 for quashing the demands made by the respondent. The ESI Court, after elaborately considering the evidence, dismissed the application. Challenging that order, applicant filed this appeal.

This appeal was heard and disposed of by a learned Single Judge of this Court on 14.6.2006. This Court considered the matter in detail and upheld the finding of the ESI Court that appellant is continuing the business and hence

it is liable to be covered under the Act. All the points raised were held against. But this Court in paragraph 8 of the original judgment found that in view of the decision of the Full Bench of this Court in *E.S.I. Corporation v. Excell Glasses Ltd. (2003 (3) KLT 42)* respondent can make a claim only for a period of 5 years. But at the same time, the appeal was dismissed. It is to be noted that the insurance case was filed challenging the demand made by the respondent from 1.4.1992 onwards. If, as a matter of fact, the respondent is not entitled to claim the amount beyond five years prior to the institution of the proceedings, this Court could not have dismissed the appeal. The appeal should have been allowed in part at least to the extent of the claim beyond the period of 5 years. But this Court dismissed the appeal. So that part of the judgment is to be reviewed. The principle laid down in Excell Glasses's case (supra) was subsequently reversed by the Apex Court in E.S.I. Corporation v. Santhakumar (2007 (1) KLT 133 (SC). The finding of this Court that the claim can be made only for 5

years is not correct. The entire paragraph 8 in the judgment dated 14.6.2006 alone is to be deleted.

In the result paragraph 8 of the judgment dated 14.6.2006 is deleted. Paragraph 8 of the judgment reads as follows: "The appeal is dismissed. No order as to costs".

The office is directed to issue a corrected copy of the judgment.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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INS. APPEAL NO. 39 OF 2003

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J U D G M E N T

30TH NOVEMBER, 2007